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Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 56.

LOUIS DEJONGE ET AL.

vs.

DANIEL MAGONE.

BRIEF FOR PLAINTIFFS IN ERROR.

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Supreme Court of the United States.

LOUIS DEJONGE, CHARLES F. ZENTGRAF and LOUIS DEJONGE, JR., Plaintiffs in Error, vs. DANIEL MAGONE, Collector of the Port of New York, Defendant in Error.	October Term, 1895. No. 56.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

This is an action involving the construction of the Tariff Act of 1883 (22 Stats. at L., 488–526). In 1888 the plaintiffs imported at New York various invoices of merchandise made from white printing or book paper and from manilla paper by a process of covering the paper with sizing, paint or color, flock and similar materials, and embossing it between steel rolls (R., p. 9), upon all of which duty was exacted by the defendant at the rate 25% *ad valorem*, under the provision in schedule M of the Act referred to (22 Stats. at L., 510) for "Paper hangings and paper for screens or fire boards, paper antiquarian, demy, drawing, elephant, foolscap, imperial, letter, note, and all other paper not specially enumerated or provided for in

this act" *(idem)*. The plaintiffs duly protested against this exaction, contending that their merchandise was properly described by the earlier provision in the same schedule of the act, for "Paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for in this act," at 15 % *ad valorem (idem)*.

Upon the trial it was proven that the difference between the duty at the rate exacted and that contended for, amounted on the importations in question to $53.02, including interest thereon to the date of trial (R., p. 16), and that the plaintiffs had paid this amount to obtain possession of their goods (R., p. 9), and had duly complied with the statutory requirements as to protest, appeal and suit *(idem)*.

The evidence adduced on behalf of the plaintiffs at the trial showed that, in the production of the imported merchandise, complete merchantable paper of the kinds known as printing or sized or book paper and manilla paper were employed (R., p. 9, fol. 18; p. 19, fol. 37), being bought in the open market *(idem)*, and that these were subjected, in the case of the imitation velvet, to a coat of strong sizing and then a coat of flock, and then dried, and, in the case of the imitation leather, to a coat of coloring matter, then a coat of sizing and then to a process of embossing between engraved steel rolls *(idem)*; that the sizing employed was an altogether different one from that used by paper makers (R., p. 12, fol. 23; p. 18, fol. 36); that the machines used by paper makers were Fourdrinier and cylinder machines only (R., p. 12, fol. 23, 24; p. 14, fol. 27), which are not used at all in producing the articles in controversy from paper (R., p. 12, fol. 23); that the machines used in producing these articles from paper are embossing rollers, grinding machines, machines for applying sizing and machines for coloring finished paper, and that no such machines as these are known in paper mills (R., p. 12, fol. 23, p. 13, fol. 26, p. 14, fol. 28); that paper is

never embossed in paper mills (R., p. 17, fol. 34); that, in making complete marketable paper into the articles in controversy, long, complicated and expensive mechanical processes were involved, requiring workmen skilled in an entirely different art from that of paper-making (R., p. 18); that the object of employing the processes and ingredients used in producing the flock-coated article was to procure an imitation of velvet (R., p. 18, fol. 35), and in producing the embossed article, to procure an imitation of leather (R., p. 19, fol. 37); that the uses of the articles in controversy are for covering books, etc., as a substitute for leather (R., p. 9, fol. 19, p. 19, fol. 37), and for mats for photograph framing and the like, to imitate velvet (R., p. 9., fol. 18, p. 18, fol. 35), and that the imported goods come in sheets, generally 20 x 25 inches in size (R., p. 10, fol. 20).

It was also proven by the plaintiffs that the terms "paper antiquarian, demy, drawing, elephant, foolscap, imperial, letter" and "note," referred to various-sized sheets of the class of drawing and writing papers —papers made of high-priced stock—and that the same class also included other sized sheets such as "flat-caps," "folios," "royal," "atlas," "Columbia," "post," "crown," etc. (R., p. 12, fol. 24; p. 13, fol. 25; p. 16, fols. 29, 30; p. 16, fol. 31).

On behalf of the defendant it was proven that the articles in suit were known to dealers in them as "embossed papers," "morocco papers" (R., p. 10, fol. 20), "imitation of velvet papers" (fol. 21), "fancy papers" (R., p. 11, fol. 22), "flock papers" (R., p. 17, fol. 32), "colored morocco papers" (R., p. 18, fol. 34), "manufactures of fancy papers" (fol. 35), and "embossed imitation morocco" (R., p. 19, fol. 36); that, in the manufacture of paper hangings, the paper, or plain stock, is printed on with water colors, and is embossed, and sometimes gilt (R., p. 16, fol. 31); that the finished product consists of paper, clay, coloring matter, water and colored metals, the paper used being a complete printing paper (R., p. 16, fol. 32); that paper like the flock

paper in suit comes in both rolls and sheets (R., p. 17, fol. 33), and when found in rolls is used for wall decoration (R., p. 18, fol. 35), and when found in sheets would not be considered as intended to be so used *(idem)*, and that wall-paper makers use the same machinery and the same kind of paper as those who make the articles in controversy *(idem)*.

Both sides having rested, a motion was made by the defendant's counsel for direction of a verdict in his favor, on the ground that plaintiffs had not shown facts sufficient to constitute a cause of action, and, as to the flock paper, that if a manufacture at all it was a manufacture of wool. This motion was denied by the Court. The plaintiffs' counsel then moved for direction of a verdict in their verdict, which motion was also denied, to which ruling exception was duly taken on behalf of the plaintiffs and was duly allowed by the Court (R., p. 19, fol. 38). The plaintiffs' counsel then requested the Court to charge the jury among other things:

If the articles in suit are made by the addition of foreign substances to paper not covered by the popular definition nor the dictionary definition of paper, they cannot be classified as paper for purposes of duty.

Unless you find that trade and commerce in 1883 and theretofore in this country had affixed a different meaning to the word "paper" from the ordinary meaning, the articles here in suit, not being within the latter, are not to be assessed as paper.

The general words of section 392 of the tariff must be construed as though they read "and all other papers of that class (designated by the nine preceding words) not specially enumerated or provided in this act," and unless you find that the articles in suit belong to that class they cannot be considered as provided for in section 392 unless by the words "paper hangings and paper for screens and fire-boards."

The Court severally refused to charge each of these requests, and to each such refusal exception was duly

taken on behalf of the plaintiffs and was duly allowed by the Court.

The Court then submitted the case to the jury, charging them among other things: "Was this article in the trade and commerce of this country, when Congress legislated in 1883, a variety of paper? In other words, if the committee of Congress that framed this act and reported it to congress had turned to the trade and commerce of this country of 1883, and had asked that trade for a comprehensive list of all kinds of paper known to them and dealt in commercially as such, would paper like this have been included in such list? If the commerce of the country had furnished to the committee of congress, in answer to such a request, a list of all the kinds of paper known to that trade, and if such list enumerated articles like these, then they are covered by the phrase 'all other papers' in Par. 392, the collector was right, and the defendant is entitled to a verdict. If, on the other hand, an article such as this would not have been included in that list at that time, then the plaintiff, having established by the proof that they are manufactures of paper, is entitled to your verdict." To this charge, exception was duly taken on behalf of the plaintiffs, and was duly allowed by the Court. The jury found a verdict for the defendant, and to review the judgment given in accordance with such verdict the plaintiffs bring this writ of error.

Assignment of Errors.

The plaintiffs in error assign for error:

1. The refusal of the court below to direct a verdict in their favor upon the facts proven.

2. The refusal of the said court to charge the jury that if the articles in suit are made by the addition of foreign substances to paper not covered by the popu-

lar definition nor the dictionary definition of paper, they cannot be classified as paper for purposes of duty.

3. The refusal of the said Court to charge the jury that unless you find that trade and commerce in 1883 and theretofore in this country had affixed a different meaning to the word "paper" from the ordinary meaning, the articles here in suit, not being within the latter, are not to be assessed as paper.

4. The refusal of the said Court to charge the jury that the general words in section 392 of the tariff must be construed as though they read "and all other papers of that class (designated by the nine preceding words) not specially enumerated or provided in this act," and unless you find that the articles in suit belong to that class they cannot be considered as provided for in section 392, unless by the words "paper hangings and paper for screens and fire-boards."

5. The charge of the said court to the jury, as follows: "Was this article in the trade and commerce of this country, when congress legislated in 1883, a variety of paper? In other words, if the committee of congress that framed this act and reported it to congress had turned to the trade and commerce of this country of 1883 and had asked that trade for a comprehensive list of all kinds of paper known to them and dealt in commercially as such, would paper like this have been included in such list? If the commerce of the country had furnished to the committee of congress, in answer to such a request, a list of all the kinds of paper known to that trade, and such list enumerated articles like these, then they are covered by the phrase 'all other papers' in Par. 392, the collector was right, and the defendant is entitled to a verdict. If, on the other hand, an article such as this would not have been included in that list at that time, then the plaintiff, hav-

ing established by the proof that they are manufactures of paper, is entitled to your verdict."

POINTS.

1.

Both the products in controversy are beyond doubt manufactures of paper or of which paper is a component material.

This provision in the tariff is a clear descriptive one, distinctly non-commercial in character, nor is there any evidence of a commercial usage in this case bearing upon the said phrase. We are, therefore, entitled to consider what is logically a manufacture of paper, or of which paper is a component material, and when thus considered it clearly indicates something *made out of* paper, in whole or in part, by such operations as constitute a process of manufacture. The evidence shows that in the production of the articles in controversy complete merchantable paper is employed as the raw material, and that it is subjected to elaborate mechanical processes, involving the employment of machinery of descriptions entirely unknown to the paper-makers' art, and operated by workmen who are not paper-makers. It shows that such complete paper is but one of the tangible ingredients in these products, the others, sizing of a special description, water-color paints, wool flock and the like, being also materials entirely foreign to the art of the paper-maker.

It is evident that paper alone might, by mere manipulation, become a manufacture of paper, but in the present case we have a combination of paper and several other ingredients, brought together and put

into the form of the imported article by several successive processes of manufacture, and the result is not simply a "manufacture of paper," but a "manufacture of which paper is a component material." The object of these processes and this association of materials is to produce imitation leather and imitation velvet, employed, as the testimony shows, in place of the articles imitated, and to represent them in different products, such as books, pocket-books, photograph mats, etc.

The articles in controversy are manufactures of which paper is a component material under the ruling of this court in the case of Hartranft vs. Wiegmann, 121 U. S., 609, for they certainly have, as compared with the paper out of which they were made, a distinctive character and use from that of mere paper.

The circuit court recognized that it had been sufficiently proved that these articles were manufactures of paper, for in the closing sentence of the charge above quoted the jury was so instructed.

2.

Being manufactures of which paper is a component material, are these products deprived of classification under the paragraph for such manufactures, by reason of the paragraph for paper ?

This was in effect the conclusion of the circuit court, and was embodied in all its rulings and in its charge to the jury. But we think there is no warrant for finding any such repugnance between the two provisions of the act, especially with regard to such products as these in suit.

Literally these are not paper at all. The definition

put in evidence by the defendant's counsel, from Webster's dictionary, shows this: "A substance in the form of thin sheets or leaves, intended to be written or printed on, to be used in wrapping, etc., and made of a pulp obtained from rags, from straw, from bark or like materials pressed and dried; a printed or written instrument; a sheet, leaf or piece of such substance." One of the witnesses gave a definition equally good and shorter. He said "Paper is a vegetable fiber felted together in a wet state" (R., p. 14, fol. 28). These definitions do not cover the articles in controversy, which could never have been produced by the processes, nor from the materials, contemplated by them.

The processes employed in producing these articles are not within the realm of paper making. No paper mill contains the machines by which they are made. No workman in that art could produce them, any more than he could produce a newspaper or a motto-paper.

No more are the products within the ordinary field of the paper dealer. A number of wholesale paper dealers were called as witnesses by the plaintiffs, and not one of them had ever dealt in these products. On the other hand, they promptly recognized, as goods within their own field, the papers out of which these products were manufactured.

But because they are known and described by names of which the word "paper" forms a part, the circuit court practically held that, by the rule of commercial usage, these products elaborately manufactured from paper—not composed wholly of paper; not known to the paper maker or the paper dealer; not used for the ordinary purposes of paper—must, nevertheless, be taken out of the provision in the statute which so clearly includes them, and put under that to which the defendant had resorted.

3.

The word "paper" in the names of these articles has no such effect as conceived by the circuit court.

The word is there rather because of the origin than because of the nature of these products. It imports the fact that they are built on a paper foundation rather than a leather or a cloth one. Perhaps, also, it subserves convenience in describing the products, obviating the use of a longer name. The same fact is found in regard to other manufactures of paper. A newspaper is not paper, but a manufacture of paper. A motto paper (a small square of paper colored and fringed at the ends) is not paper, but a manufacture of paper. And, in the decisions cited in our point 4 *(infra)*, nearly every product held to be dutiable as a manufacture of paper was, just as are the products in controversy, identified by the name of one or another paper. No conflict was ever perceived, prior to the decision of the circuit court in the present case, between the provisions for paper and those for manufactures of paper. But, if the rule of commercial usage is to be applied here, a conflict will at once be created, for, as pointed out, many manufactures of paper are known by names embodying the word "paper."

4.

The rule of commercial usage should not be employed to obliterate a statutory distinction, nor to create a conflict between the several parts of the law.

The said rule was regarded by the circuit court as requiring to be applied at its hands to this issue, and hence the jury was asked merely to determine whether or not these products were commercially a variety of paper, and, upon its affirmative answer, the decision was for the defendant. We do not take issue with the form, but with the substance of this submission, for we maintain that a full view of the wording of the law, and of the long line of decisions which preceded and followed its enactment right up to the date of this case, clearly show that no such construction of the provisions involved was intended by congress. And there is no room for doubt that, if Congress did intend that a commercial construction of the paper paragraph should not be applied, nor a conflict created between that and the provision for manufactures of paper, the courts will give effect to such intent as readily as though it were declared in so many words.

The Revised Statutes (p. 479) contained practically the same provisions for paper and manufactures of paper as did the act of 1883, the differences being in the rates affixed, and in the fact that in the earlier law manufactures of paper were named in one paragraph with many sorts of paper, while, in the later, each has a paragraph to itself. In each law a separate paragraph, found somewhat further along, provided for screen and fireboard and wall paper, and for the writing and drawing class of papers.

Under the Revised Statutes, the question of what were to be regarded, for tariff purposes, as manufactures of paper, very promptly arose, and in its decision (S. 2011) the treasury ruled that "all articles of paper which have been changed in essential form, or which have been embossed, stamped, molded or compressed together by sheets, *are manufactures of paper.*" It is, of course, perfectly evident that this meant "manufactures of paper *as contradistinguished from paper.*" Otherwise, the ruling would have been idle.

In 1878, in its decision S. 3668, the treasury construed the entirely parallel provisions for leather and manufactures of leather (Rev. Stats., p. 477), holding that "pieces of leather, which are impressed with various designs by an embossing machine, during which process gold sizing is applied, and then tinted by the brush," were dutiable *as manufactures of leather.*

Later, in the same year, it was held, in S. 3807, that painted sheets of paper, to be made up into screens, curtains, etc., were manufactures of paper and so dutiable.

In 1879 it was held, in decision S. 4230, that certain sheets of paper or card, bearing printed pictures and embossed, were dutiable as manufactures of paper, the treasury stating that it regarded it as immaterial whether the embossing was done before or after the picture was printed, "inasmuch as the embossing is the result of a process distinct from the printing, and constitutes the articles 'manufactures of paper.'"

In decision S. 7167 it was held that a product produced by pasting several sheets of paper together and then pressing in a mold into an ornamental design, for decorating, was dutiable as a manufacture of paper. "The material used in the manufacture" said the treasury, "is paper, and in its present condition it is simply a manufacture of paper."

In S. 7258, bands of gilt and embossed paper were held to be manufactures of paper, and so dutiable.

In S. 8169, issued in 1887 and relating to the act which also controlled the case at bar, the treasury announced the decision of the circuit court on albumenized photographic paper, which had been classified, just as have the articles now in controversy, as paper not otherwise enumerated. The circuit court, however, found, that the processes of sensitizing and albumenizing were definite and separate operations from that used in the manufacture of the paper, and were sufficient to place the completed article within the purview of the provisions for *manufactures of which paper*

is a component material. It is interesting to note that the Attorney-General expressed his opinion of the correctness of those conclusions, and that they were acquiesced in without appeal. The decision seems to be unpublished, save in the form of this treasury circular.

In S. 8903 the same principle of discrimination was applied to ferro-prussiate paper, and this was also held to be a manufacture of paper, and not merely paper, and in S. 9087 the same conclusion was reached as to paper coated with a preparation of gelatine and lampblack.

5.

The language of the act of 1883 must be deemed to have been adopted with knowledge of the earlier decisions, and Congress to have incorporated their effect into its words.

McDonald vs. Hoey, 110 U. S., 619.
Heath vs. Wallace, 138 U. S., 573.
Robertson vs. Bradbury, 132 U. S., 491.
Fauché vs. Schell, 138 U. S., 562.
Dwight vs. Merritt, 140 U. S., 213.

And see opinion of Attorney-General, quoted in
Earnshaw vs. Cadwallader, 145 U. S., 247.

Thus Congress, by "manufactures of paper" in 1883, meant, and, therefore, *enacted*, what the department rulings had defined as manufactures of paper for many years before, and these definitions, originating with an executive department, thereby acquired all the force of an express statutory rule of construction.

When, in addition to the light thus thrown on the intent of the act of 1883, regarding the line to be

drawn between paper and manufactures of paper, we observe the many decisions, above quoted, which were made under the operation of that act, it appears that a principle of construction or definition is conclusively established which fully covers the case at bar. No distinction can be found between the various papers covered by these decisions and the products now in controversy. The principle involved is the same for them all, and the same principle equally applies to the cotton cloth coated with a transparent gelatinous substance, which, in S. 14,952, the recently created board of general appraisers decided, under the act of 1890, was not cotton cloth, but a manufacture of which cotton was a component material.

6.

The paragraph under which duty was exacted was not a provision for all papers, even when commercially known as such.

To find that an article was paper, in fact or commercially, was therefore no warrant for concluding that this paragraph prescribed the duty on it.

It provided for two classes of articles: *(a)*, a special group of products standing equivocally between paper and manufactures of paper, and, *(b)*, the class of writing and drawing papers. To support this conclusion needs only a reference to the established rule, *noscitur a sociis*.

This rule is asserted in:

Forbes Lithographing Co. vs. Worthington, 132 U. S., 655.

U. S. vs. 65 Terra Cotta Vases, 18 Fed. Rep., 508.

Magone vs. American Trading Co., 57 Fed. Rep., 394.
Kraft vs. United States, 61 Fed. Rep., 398.

and many other cases.

A recent treasury ruling well states it, in regard to the provision in the act of 1890 for marking imported articles of foreign manufacture, "and all packages containing such or other imported articles." In S. 15,441 this was held by the treasury to mean "such or other articles of foreign manufacture."

It is proven amply and without contradiction in this case, that from the words "paper antiquarian" to the word "note," the provision in this paragraph is for a *class* of papers—viz., the fine products of high-class stock, used for writing and drawing, and that there are a great many other members of the same class beside those specified by name in the law.

There is a striking parallel between the circumstances of this case and that of Hollander vs. Magone, 149 U. S., 586, in which Mr. Justice BREWER said, speaking of the provision as to liquors: "If 'liquors' here is used in its generic sense, the other terms are superfluous. That they are present emphasizes the fact that the word is not so used." So must we say as to the present case, that, if "other paper" be meant generically, there is no room for "paper for screens and fire-boards" to operate, or at all events those words are utterly superfluous.

It cannot be said that the presence in the paragraph of the provision for "paper hangings and paper for screens or fire-boards" prevents the application of this rule. The paragraph is merely a welding of two distinct provisions into one—a measure frequently resorted to by Congress, where the rate is to be the same, for mere economy of space. In the Revised Statutes a semicolon separated the two parts of the paragraph; and, although that has been changed to a comma in the act of 1883, the repetition of the word "paper" sufficiently emphasizes the separation. As

to paper for screens and fire-boards, we have no evidence regarding their nature, but paper hangings were fully described at pages 16 to 19 of the record, and are a class of *manufactures of paper* distinguishable from, but fairly analogous to, the products in controversy, and, like these, the result of subjecting complete paper to elaborate processes and the addition of new ingredients. And it is clear that, had not paper hangings been specially named in this paragraph, they would not have been covered by its terms. They are specially named because Congress intended them to pay the rate affixed to this paragraph, instead of taking their natural classification as manufactures of paper, just as coral, cut, was named in the duty list of the Revised Statutes, to prevent its passing under the free list provision for coral unmanufactured, as pointed out by Mr. Justice BLATCHFORD in Hartranft vs. Wiegmann, 121 U. S., 609. And the products here in controversy are *not* named in the paper paragraph, as paper hangings are, and hence they *do* fall into their natural classification, although paper hangings cannot so fall. The evidence shows clearly that the products in the case at bar are not paper hangings nor paper for screens or fire boards.

The intent of Congress to provide for the fine writing and drawing class of papers only in this paragraph is also discernible in the rate affixed to it, which was the highest imposed on any article of paper in the entire schedule (for the rate on fancy boxes cannot be said to be a rate on paper goods, merely). It is a rule of general observance with Congress to affix high rates of duty to fine and luxurious classes of articles. No other paper named was taxed with so high a rate as 25 per cent. Sized printing paper paid but 20; unsized but 15; sheathing paper only 10. And it is noteworthy that not only are the finished products here in controversy not the class of articles referred to in the paragraph under discussion, but the papers out of which they are made were also not of such class. The white book or

printing paper was specified by name, and the manilla paper was about on a par with sheathing paper.

Hence arises the interesting question, can a paper, specified by name in one paragraph of the law, be converted into another sort of paper specified in a later paragraph, by adding ingredients, and putting it through manipulations, not known to the paper-making art, and this despite a general provision for all manufactures of paper or of which paper is a component material? We think it clear that such would not be a logical view of the law.

We contend, then, that the circuit judge erred in all his rulings, charges and refusals to rule and to charge, in so far as they were controlled by the view that every product whose name included the word "paper," and which hence was, in any sense, a variety of paper, was dutiable under the provision for "paper antiquarian, etc.," in the act in question.

7.

The product composed of paper, sizing and wool flock was dutiable as a manufacture of paper and not as a manufacture of wool.

The provision to which resort would need to be had to warrant such latter classification (22 Stats. at L., 508) is for "*manufactures of wool* * * * composed wholly or in part of wool," etc. Even could the flock be said to be wool, and the manufacture thus composed in part of wool, it would be going to the point of absurdity to hold the complete product a "manufacture of wool." It is *ejusdem generis* with paper articles; not with cloths, shawls or wearing apparel. Its

serviceable and indispensable feature is the paper, and in harmony with the decision of this court in Arthur vs. Sussfeld, 96 U. S., 128, this would be held to control the classifications. The provision for manufactures in part of paper is not limited to those wherein it forms the chief value, and, moreover, there is no acceptable evidence that it is not the chief value in this case. The witness Walter, the only one who was asked as to the relative value of the components, was a manufacturer and not an importer (R., p. 16), and, of course, gave only their values in the United States, including duties, with which we are not concerned. The proportions in Europe, where these imports were manufactured, would doubtless be entirely different.

But the flock in this product is not wool for tariff purposes. It is an article specially provided for (22 Stats. at L., 508), along with shoddy, waste, mingo, etc. Thus the question is like that decided by this court in the case of Seeberger vs. Cahn, 137 U. S., 95, where cloths composed of worsted and shoddy were held not to be "composed in part of wool" under the act. Similarly manufactures of paper and flock are not "manufactures in part of wool," and hence there is no more of an obstacle to prevent the classification of these goods at 15 per cent. than there is in the case of the embossed imitation leather goods.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANT IN ERROR.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANT IN ERROR.

This is one of the ordinary customs cases brought under § 3011 of the Revised Statutes. The importations in question were made in 1888, so that the case is governed by the tariff law of 1883. It was tried before Judge Lacombe and a jury in February, 1890. Each side moved for the direction of a verdict, both motions were denied, and the case was submitted to the jury on the question of commercial designation.

The articles in question are described as "two lots of paper" (p. 9), namely: A certain article known as "embossed paper or morocco paper" (p. 10), being made in imitation of leather, and an article called "imitation of velvet paper" (p. 10), being made in imitation of velvet.

Both of these articles were classified by the collector, under paragraph 392 of the act of 1883, as follows:

> Paper hangings and paper for screens or fire-boards; paper, antiquarian, demy, drawing, elephant, foolscap, imperial, letter, note, and all other paper not specially enumerated or provided for in this act, 25 per centum *ad valorem*.

Plaintiffs' protest claimed that they were dutiable under paragraph 388 as follows:

> Paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for in this act, 15 per centum *ad valorem*.

The "imitation of velvet paper," which contained wool, was claimed by the collector on the trial to be dutiable (if not as classified by him at the time of entry) under paragraph 362:

> Woolen cloths, woolen shawls, and all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in this act, valued at not exceeding 80 cents per pound, 35 cents per pound and 35 per centum *ad valorem*. * * *

STATEMENT OF FACTS.

1. *Imitation of leather.*—The process of making this paper is described as follows by the plaintiff: "Color

was first laid upon the paper, then it was dried, then sized, and finally passed through engraved steel rollers, which embossed its surface" (p. 9). "The pattern is brought out by embossing of the paper. There is no other material in this article except the paper, the coloring matter, and the size" (p. 10).

It was admitted by one of plaintiffs' witnesses that paper in the strictest sense of the term may be sized and colored (p. 15). It was admitted on the part of the collector, on the other hand, that "the sizing used in the paper manufacturers' trade" is not the same as the sizing used in preparing paper like the importations at bar. "It is of the same ingredients but in a different combination" (p. 18).

Ordinary paper manufacturers do not use embossing machines or machines for putting a soft size on the surface of the paper (p. 14). Embossing machines, however, are used by manufacturers of wall paper or paper hangings, one of the varieties of paper specified in paragraph 392 (p. 16).

This paper is "used for a great many different ornamental purposes; for instance, books, to cover books, and for a great many other purposes, to imitate leather" (p. 9). "It is very rarely used for covers of books or pamphlets. It is used for a great many purposes. It is used for covering paper boxes, for sample cards, for pocketbooks, for pamphlets; it is difficult to state them all. It is used to manufacture these articles. It comes in sheets, generally 20 by 25 inches, the usual size" (p. 10). "It was and is used by paper-box makers for coverings, and

more generally to take the place of leather or leatherette, in my opinion. It is used more extensively by bookbinders and others than by box makers, but is used all along the line where people wish to find a substitute for or to imitate leather" (p. 19).

2. *Imitations of velvet.*—This paper was "made out of paper, coloring matter, sizing, *and flocks*" (p. 9). It is the presence of the flocks which mainly differentiates it from the leather paper. The process of manufacture is as follows: "First, to put a strong sizing on the papers, then to sift different colored flocks into the wet sizing, and then to dry the product" (p. 9). "The material of flock is wool. This wool, after it has been finally ground, is taken and placed on the surface of the paper, so that the material of the velvet paper consists of paper, sizing, and wool" (p. 11). Paper, strictly so called, is made from vegetable fiber. Flock printing machines and surface-coating machines, like sizing machines for putting the soft size on the surface of the paper, are not to be found in the ordinary paper mills (p. 14).

"Flock in substance is wool; it is the shearings of cloth, and if that can not be had they grind the wool and dye it, and that is called 'flock.' To make this article we have to take sized paper as it comes from the mill. These pass over a machine and take a sizing or glue matter, or a varnish, as the manufacturer likes to make it, and the flock is then dusted on. The gum binds the flock to the paper. It is afterwards dried and cut into sheets or rolls; that is the process. The object of the

sizing is to make the flock stick to the raw paper. * * * As to the relative value of the material, *the wool flock would be worth about three times as much as the paper.* * * * The object of putting the flock on the paper is to give it an imitation of velvet; that is, to increase the value of it" (p. 17).

This velvet paper, according to the collector's testimony, "is used largely to put on walls, and has been so used for "forty years and over (p. 17). Plaintiff admitted that velvet papers were used on walls, but claimed that "these were made of heavier stock and heavier flocks, a different manufacture altogether" (p. 11). It is imported in sheets (p. 11). It is, according to plaintiff, "mostly used for mats to contain photographs, to frame photographs, to imitate velvet" (p. 9).

Both of the articles mentioned are "put through various processes—long, complicated, and expensive—requiring workmen unaccustomed to making paper itself, and involving an entirely different art from that of making the paper used in this manufacture;" but the same machinery is used in manufacturing wall paper (p. 18).

ARGUMENT.

I.

In submitting to the jury the question of commercial designation of the word "paper," the court followed the principle of such cases as *Cadwalader* v. *Zeh* (151 U. S., 171), *Bogle* v. *Magone* (152 U. S., 623), and the cases therein cited.

It was undisputed that the important articles were commercially known as "papers" with some specific designa-

tion prefixed, such as "embossed paper" or "morocco paper," "imitation of velvet paper," "fancy papers" (pp. 10, 11).

II.

If the question of commercial designation was material to the decision of the case, the court fell into no error in its rulings bearing upon that question. The evidence was strictly confined to usages in the year 1883 and prior thereto. (*Cadwalader* v. *Zeh*, *supra*; *Maddock* v. *Magone*, 152 U. S., 368, 371.)

The sixth request to charge is sufficiently covered by the charge actually given (p. 20).

III.

If the question of commercial designation, as insisted by plaintiffs' counsel, is not material to the case, then, indeed, it should not have been submitted to the jury; but plaintiffs were not prejudiced by such submission, because in the absence of any evidence of commercial designation a verdict should have been directed for defendant.

If there is no trade designation, or if the article in question is not one subject to be governed by evidence of trade designation, then the construction of the statute is to be governed by the ordinary meaning of the English language. Of this, however, the court takes judicial notice, and if there is no conflict in the testimony there is no question for the jury. (*Nix* v. *Hedden*, 149 U. S., 304; *Saltonstall* v. *Wiebusch*, 156 U. S., 601.)

As to the letter paper, it has been seen that there is no ingredient not to be found in ordinary paper. Ordinary

writing paper is made up of vegetable fiber, sizing, and coloring. The sizing and coloring are different, but it remains still a variety of paper. A shell which has been etched and polished is still a shell. (*Hartranft* v. *Wiegmann*, 121 U. S., 609.) So paper which has been stiffened and colored, like "paper for screens or fireboards" (par. 392), remains paper. If there were a distinction drawn between "crude" paper and an "article of paper," it might fall under the latter clause; but that would not imply that it is a manufacture. It is simply paper specially adapted for certain uses. (*Junge* v. *Hedden*, 146 U. S., 233, 239; see also *United States* v. *Merck*, 66 Fed. Rep., 251.)

As to the velvet paper, if it is not simply paper, but a manufacture, it is classifiable as a manufacture of wool, since wool is its component of chief value. (Rev. Stat., § 2499; *Liebenroth* v. *Robertson*, 144 U. S., 35; *Herrman* v. *Robertson*, 152 U. S., 521, 524; *Seeberger* v. *Schlesinger*, *id.*, 581, 588, 589.) But in that case plaintiff can not complain that he should have paid a higher duty than he actually did. The burden is not on the collector to sustain the precise classification that he makes. The burden is on the importer to show that he was prejudiced; and this showing must be in accordance with the protest. (*Herrman* v. *Robertson*, *supra*.)

It is suggested that it does not sufficiently appear whether wool or paper is the component material of chief value. Assuming this to be true, then we are left to the next clause of § 2499, and it is to be classified as wool because that is dutiable at the higher rate. (*Benziger* v.

Robertson, 122 U. S., 211.) *Seeberger* v. *Cahn*, 137 U. S., 95, is not in point. That case turned on the fact that the tariff law included both "manufactures of wool" and "manufactures of worsted." Worsted being made of wool, it was apparent that this was a case where the rule of "more specific designation" must be appealed to. Worsted, and not shoddy, was the determining material.

Arthur v. *Susfeld*, 96 U. S., 128, turned on the principle of *noscitur a sociis*, as applied to the words "pebbles for spectacles and."

It is submitted, however, that the "velvet paper" is also simply "paper."

IV.

None of the exceptions are available to plaintiffs in error. It is immaterial (p. 9) whether the expense and time involved in adapting this paper for its special uses was much or little. (*Saltonstall* v. *Wiebusch*, 156 U. S., 601.)

The method of making wall paper was relevant, because wall paper is evidently intended by the phrase "paper hangings" in paragraph 392 of the statute, and is therefore specially recognized by the statute as "paper" rather than a manufacture of paper.

The other exceptions do not seem to have prejudiced plaintiff in error, or to require special notice.

It is respectfully submitted that the judgment should be affirmed.

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